

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

OCTOBER 23, 2001

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, October 23, 2001 at 9:00 a.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting called to order at 9:00 a.m. by Chairman ARTHUR SLATTERY.

Present: Commissioners ARTHUR SLATTERY, MARTIN SMITH, BARBARA HEATH, NANCY LeRoy, Executive Director BETH EMMONS, Investigator ANN FLANAGAN and Executive Secretary CINDY PATTEN.

- I. Motion by Commissioner LeRoy, seconded by Commissioner SMITH, to approve and accept the minutes of the Commission meeting held on August 21, 2001.

II. APPOINTMENTS

9:00 a.m. – Equivalency Interviews

<u>CANDIDATE</u>	<u>COMMISSIONER</u>	<u>DETERMINATION</u>
CHRISTOPHER GRAHAM	SLATTERY	APPROVED
BRANDON HAWKS	SMITH	APPROVED
BENJAMIN LARKIN	SLATTERY	APPROVED

9:20 a.m. – MATTHEW P. WING – appeared before the Commission to explain a “yes” answer to question #7 on his salesperson’s application. After explanation, discussion and review, and on a motion by Commissioner LeRoy, seconded by Commissioner Heath, the Commission unanimously approved Mr. Wing to apply for his salesperson’s license. Commissioner Slattery was recused from the decision of the matter.

9:30 a.m. – NICHOLAS P. TURMEL – appeared before the Commission to explain a “yes” answer to question #7 on his salesperson’s application. After explanation, discussion and review, and on a motion by Commissioner LeRoy, seconded by Commissioner Heath, the Commission unanimously approved Mr. Turmel to apply for his salesperson’s license.

9:45 a.m. – GREGG T. BURWELL – appeared before the Commission to explain a “yes” answer to question #7 on his salesperson’s application. After explanation, discussion and review, and on a motion by Commissioner LeRoy, seconded by Commissioner Smith, the Commission unanimously approved Mr. Burwell to apply for his salesperson’s license.

1:45 p.m. – DAWN THOMSON – appeared before the Commission to have the Commission reconsider her question which was discussed at the March 2001 Commission meeting as to whether she could, as a licensed real estate broker, offer coverage to other licensed real estate agents and/or brokers, on a Fee-For-Service basis acting in the capacity of a non-agent. After explanation, review and discussion, the Commission unanimously decided that Ms. Thomson's proposal was acceptable as long as she only performed the duties of a non-agent and disclosed her agency relationship as a non-agent to all parties.

III. DISCUSSION

R. J. MAZZARELLA of Scenic Lakes Properties, Inc. requested the Commission to rule on whether it is permissible to advertise other brokers listings. Mr. Mazzarella indicated that Realtors distribute other broker's listings through the MLS. After discussion and review, the Commission unanimously decided that advertising property without a listing violated Rea 404.04. However, when Realtors distribute other broker's listings through the MLS, they are taking the information directly from the listing broker's computer input with permission of the broker, thus there is no chance that the information could be misrepresented from the actual listing document. Mr. Mazzarella to be so notified.

DR. WILLIAM TURNER of Westwater Resources requested an interpretation of the licensing requirements for the sale of water and water rights by an out of state broker. The Commission discussed the issue and determined that water and water rights fall under the definition of "real estate" under New Hampshire law. After discussion and review the Commission unanimously decided that to broker water or water rights in New Hampshire would require a New Hampshire real estate license or a Cooperating Agreement between the out of state broker and a New Hampshire broker. Dr. William Turner to be so notified.

DAVID M. RAPP of Cendant Mobility (USAA MoversAdvantage) requested an interpretation from the Commission concerning consumers' rights to negotiate and contract for real estate services. After discussion and review, the Commission unanimously decided that paying referrals to unlicensed individuals violated RSA 331-A:26 XXIV, however, it is permissible to amend a listing or buyer agency agreement. Mr. Rapp to be so notified.

DENNIS & THERESA DUPUIS requested a withdrawal of their complaint File No. 2000-08-01 DENNIS & THERESA DUPUIS VS HEIDI PALMER (HEIDI PALMER REAL ESTATE) based on the resolution of their differences. After discussion and review, and on a motion by Commissioner SLATTERY, seconded by Commissioner HEATH, the Commission unanimously decided to approve the withdrawal of File No. 2000-08-01. Parties to the Complaint to be so notified.

CLEMENT A. ST. HILAIRE requested a Motion to Dismiss the Complaint File No. 2001-09-02 JEFFREY P. BRYAN VS CLEMENT A. ST. HILAIRE. After review and discussion with a commission members present and voting, including a conference call with Commissioner IKAWA, the Commission unanimously denied Mr. St. Hilaire's request.

IV. **OTHER BUSINESS**

1. Tuesday, November 20, 2001 was unanimously approved as the date for the next regular meeting.

2. CASE EVALUATIONS

(a) **FILE NO. 2001-03-02**

Evaluator: Commissioner SLATTERY

Determination: Should be heard, hearing to be scheduled. In the alternative, the Commission unanimously approved to offer the Respondent a Settlement Agreement with a disciplinary fine of \$300.

(b) **FILE NO. 2001-04-01**

Evaluator: Commissioner LeRoy

Determination: Should be heard, hearing to be scheduled.

(c) **FILE NO. 2001-05-01**

Evaluator: Commissioner SLATTERY

Determination: No violation, should not be heard.

(d) **FILE NO. 2001-06-03**

Evaluator: Commissioner HEATH

Determination: Should be heard, hearing to be scheduled.

The above determinations were unanimously approved.

3. ORDERS

The following Orders were issued by the New Hampshire Real Estate Commission. Copies of the Orders are attached and become part of the official minutes of this meeting.

FILE NO. 12-4-98 LAWRENCE S. WHITE VS. RICHARD N. DANAIS

FILE NO. 2000-09-02 JEFFREY P. BRYAN VS. CLEMENT A. ST. HILAIRE

V. **HEARING 10:45 AM**

FILE NO. 2000-07-01 N.H.R.E.C. VS. LEIGH D. BOSSE (DBA: CENTURY 21 RED COAT REALTY)

Evaluator: Commissioner LeRoy

The following persons were present at the hearing:

Commission: Commissioners MARTIN SMITH, ARTHUR SLATTERY, BARBARA HEATH, Executive Director BETH EMMONS, Investigator ANN FLANAGAN, and Executive Secretary CINDY PATTEN.

Stenographer: BARRY G. NOLIN

Gerard J. Nolin & Associates, LLC
275 South St., P.O. Box 1088
Concord, NH 03302-1088

Evaluator: Commissioner LeRoy evaluated the above matter and abstained from participation in the discussion and resulting decisions.

Complainant: N.H.R.E.C. through its Investigator ANN FLANAGAN

Attorney: Pro Se

Respondent: Leigh D. Bosse

Century 21 Red Coat Realty
246 West Main Street
Hillsborough, NH 03244-2100

Attorney: Pro Se

Decision: Pending – subject to review of transcripts and exhibits.

VI. **HEARING 11:35 AM**

FILE NO. 3-7-00 LINDA O'KEEFE VS. ALLAN COLE & CAROL ANDERSON (AC REAL ESTATE ASSOCIATES)

Evaluator: Commissioner HEATH

The following persons were present at the hearing:

Commission: Commissioners MARTIN SMITH, ARTHUR SLATTERY, NANCY LeRoy, Executive Director BETH EMMONS, Investigator ANN FLANAGAN and Executive Secretary CINDY PATTEN.

Evaluator: Commissioner HEATH evaluated the above matter and abstained from participation in the discussion and resulting decisions.

Stenographer: BARRY G. NOLIN

Gerard J. Nolin & Associates, LLC
275 South St., P.O. Box 1088
Concord, NH 03302-1088

Complainant: Linda O'Keefe

48 Tremont Street
Boscawen, NH 03303

Attorney: Pro Se

Respondents: Allan Cole

AC Real Estate Associates
P.O. Box 4146
Concord, NH 03302-4146

&

Carol Anderson

AC Real Estate Associates
P.O. Box 4146
Concord, NH 03302-4146

Attorney: Pro Se

Witness: Michelle Rix

Decision: Pending – subject to review of transcripts and exhibits.

VII. **HEARING 1:25 PM**

N.H.R.E.C. VS. CYNTHIA GUNN

The following persons were present at the hearing:

Commission: Commissioners MARTIN SMITH, BARBARA HEATH, NANCY LeRoy,
Executive Director BETH EMMONS, Investigator ANN FLANAGAN, and Executive Secretary
CINDY PATTEN.

Commissioner SLATTERY abstained from participation in the discussion and resulting decisions.

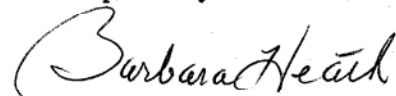
Complainant: N.H.R.E.C. through its Investigator ANN FLANAGAN

Attorney: Pro Se

Decision: Pending – subject to review of transcripts and exhibits.

- VIII. Motion by Commissioner SMITH, seconded by Commissioner LeRoy to adjourn the meeting.
Chairman SLATTERY adjourned the meeting at 2:10 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Barbara Heath".

BARBARA HEATH
Clerk

NEW HAMPSHIRE REAL ESTATE COMMISSION

ORDER

FILE NO. 2000-09-02

JEFFREY P. BRYAN

V

CLEMENT A. ST. HILAIRE

This matter comes before the Real Estate Commission on the complaint of Jeffrey P. Bryan, who alleges violations of NH RSA 331-A: 13, IV and VI, NH RSA 331-A: 26, IV, VII, XIII, XXVII, XXIX and New Hampshire Code of Administrative Rules, Rea 701.01 (i) and 702.01 (b) by Clement A. St. Hilaire. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Clement A. St. Hilaire (hereinafter referred to as respondent) was licensed as a real estate broker on 24 December 1997 and is the broker of record for St. Hilaire Agency, and was so licensed at the time of the alleged violations.

2. Jeffrey P. Bryan (hereinafter referred to as complainant) entered into a Purchase & Sales Agreement with Alan Sherburne, Executor (hereinafter referred to as seller), to purchase a parcel of land located in Stratham and North Hampton, New Hampshire, which was listed by an exclusive listing contract between seller and St. Hilaire Agency.

3. The Purchase & Sales Agreement was contingent on right of way zoning to access the property.

4. At complainant's own expense, time, and effort, complainant hired a surveyor and lawyer, and met with abutters and the town of Stratham, and determined that the property had no access.

5. Seller and complainant mutually released each other from the Purchase & Sales Agreement and they both authorized respondent to return the \$5,000 escrow deposit held by St. Hilaire Agency to complainant, due to the problem with access to the property despite the efforts to solve the problem.

6. Attorney R. Timothy Phoenix's letter dated June 13, 2000 to respondent indicates complainant's demand for the return of deposit based on seller's obligation to provide good title including access, even though complainant had spent considerable time and money trying to obtain access.

7. Seller's letters dated September 8, 2000 and June 20, 2000 to respondent and complainant respectively, indicate seller's agreement to return deposit to complainant

because of the lack of adequate access to the property. It is uncontested that seller concurs with complainant's assessment that the property is inaccessible and that the \$5,000 escrow deposit should be released to complainant.

8. Respondent testified that he has continued to refuse to return the deposit to complainant, contrary to the expressed instructions of his client, because respondent feels that complainant breached the contract by not taking further measures to obtain access to the property, and that seller breached the contract by allowing complainant to be released from the contract based on lack of access. Respondent testified that respondent believes the property would be accessible if further measures were pursued.

9. Respondent states that he is suing seller for a commission for producing a buyer for the property, and that if he released the deposit to complainant, that would negate respondent's ability to sue seller for a commission.

10. The hearing was terminated by the Real Estate Commission due to respondent's repetitive testimony not material to the matter, despite continued instruction from the Real Estate Commission to focus on the issues before it.

11. The Real Estate Commission allowed both complainant and respondent an additional opportunity to submit statements setting forth what further evidence and testimony they would present as offers of proof in the event that a continued hearing should be scheduled.

12. In response to #11 above, respondent submitted a motion to dismiss the complaint.

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

The Real Estate Commission carefully reviewed and considered respondent's motion, including his allegations that Commissioner Barbara Heath had an undisclosed conflict of interest as the mother of Susan Conway (the owner of roadway), and that evaluating Commissioner Martin Smith took part in the hearing despite his role as case evaluator. Commissioner Barbara Heath indicates that she is not related to Susan Conway, that she sold property she owned over fifteen years ago, but has had no relationship with her since that time, and review of the transcript indicates that Commissioner Martin Smith was recused from the hearing. Also, during the hearing, respondent made repeated references to a purported Maryland law which supposedly also exists in New Hampshire law which would negate respondent's ability to sue seller for a commission for producing a buyer for the property if he released the deposit to

complainant. At the hearing, the Commission indicated that it was only interested in New Hampshire law, but despite numerous legal references in his motion, respondent did not produce any such New Hampshire law. Respondent's additional offers of proof were considered and there is no indication any material evidence was excluded at the hearing, and even if respondent's arguments were true they would not have changed the Commission's decision in this case.

The primary issue in this case is respondent's ignorance of the law. RSA 331-A:13, IV mandates that a broker release escrow money pursuant to receiving signed releases from the parties to the Purchase & Sales Agreement, and RSA 331-A:26, VII requires the broker to release the money within 30 days. Respondent has refused to do this because he erroneously believes that he would not be able to sue the seller for a commission for producing a buyer for the property without the deposit. Respondent does not seem to comprehend that there are two (2) separate contracts - a Purchase & Sales Agreement between seller and buyer, and an Exclusive Listing Agreement between seller and respondent. The \$5,000 escrow deposit was for the Purchase & Sales Agreement between seller and buyer. The \$5,000 deposit is separate and not a part of the Exclusive Listing Agreement between seller and respondent. If respondent wants to sue the seller for a real estate commission pursuant to the Exclusive Listing Agreement, that would be a civil matter between seller and respondent to be determined by a court of competent jurisdiction. However, in this case, both signatories to the Purchase & Sales Agreement have released each other from the contract because both seller and buyer are convinced that the property lacks access. Therefore, the Commission rules that respondent violated RSA 331-A:13, IV and RSA 331-A:26, VII.

Due to a lack of evidence to support the other allegations, NH RSA 331-A: 13, VI, NH RSA 331-A: 26, IV, XIII, XXVII, XXIX and New Hampshire Code of Administrative Rules, Rea 701.01 (i) and 702.01 (b), the Commission rules that respondent did not violate these statutes or administrative rules.

The Real Estate Commission is concerned about respondent's ignorance of the law, his failure to release the escrow funds, and the manner in which he conducted himself at the hearing. The Commission hereby Orders that respondent show proof that he has returned the \$5,000 escrow deposit to complainant within thirty (30) days of the date of this Order. Failure to do so shall result in possible additional penalties including revocation of respondent's real estate license, claim against his real estate escrow account bond, and criminal penalties. The Commission further Orders that respondent's real estate license is suspended until such time that respondent returns the \$5,000 deposit to

complainant, shows proof of completion of a 40 hour Commission accredited pre-licensing course, and pays a disciplinary fine to the State of New Hampshire General Fund in the amount of \$2,000 for each offense for a total of \$4,000. Respondent shall surrender his real estate broker wall license and pocket ID card to the Commission within thirty (30) days of the date of this Order.

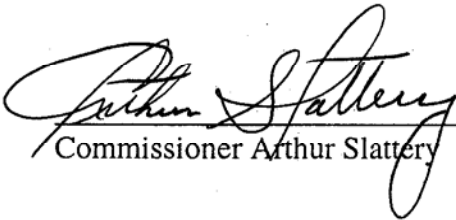
Under the provisions of RSA 331-A:28, III, this disciplinary action is subject to appeal in the Superior Court. The respondent has thirty (30) days from the date of this Order in which to file an appeal. Such an appeal will suspend the Commission's disciplinary action pending resolution of the appeal. If this decision is not appealed within thirty (30) days, this Order will become final.

Commissioner Smith evaluated this case and did not take part in the hearing or decision.

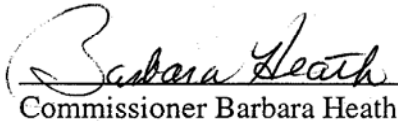
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Commissioner William DeLashmit

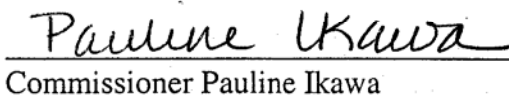
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Commissioner Arthur Slattery

10-23-01
DATE


Commissioner Barbara Heath

10-23-01
DATE


Commissioner Pauline Ikawa

10/23/01
DATE

STATE OF NEW HAMPSHIRE

REAL ESTATE COMMISSION

ORDER FILE NO. 12-4-98

LAWRENCE S. WHITE
VS
RICHARD N. DANAIS
(DANAIS REALTY GROUP)

This matter comes before the Real Estate Commission on the complaint of Lawrence S. White, who alleges violation of NH RSA 331-A:26, XXIV by Richard N. Danais (Danaïs Realty Group). The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Richard N. Danais (hereinafter referred to as "Respondent") was licensed as a real estate broker on 19 February 1976 and is the broker of record for Danais Realty Group, 799 Mammoth Road, Manchester, New Hampshire, and was so licensed at the time of the alleged violation.
2. Lawrence S. White (hereinafter referred to as "Complainant"), who was also a licensed real estate broker, brought this complaint before the Real Estate Commission. The Complainant was not a party to the transaction that is the subject of the complaint. Complainant testified that he brought the complaint as a citizen to ensure that Respondent obey the laws of the State of New Hampshire.
3. Complainant alleges that Respondent paid David Boutin a \$4,000.00 fee after Mr. Boutin's real estate broker's license had expired. The Complainant also alleges that the Respondent represented that Mr. Boutin was a partner at Danais Realty Group on 30 March 1998 and as a broker on 25 January 1999, after Mr. Boutin was no longer employed with Danais Realty Group.
4. David Boutin was licensed as a real estate broker on 19 June 1985, and was employed by Danais Realty Group. Mr. Boutin's real estate broker's license expired on 19 June 1997.
5. Respondent testified and admits he paid Mr. Boutin a \$4,000.00 fee after Mr. Boutin's license had expired, but the brokerage activity by Mr. Boutin that gave rise to the fee was performed prior to the expiration of his real estate license.
6. Richard Mulvee, a broker participant to the transaction, testified that David Boutin's activities were not part of the transaction or assignment that led to the closing. Mr. Mulvee worked at Danais Realty Group from approximately 1995 – 8 July 1997. Mr.

Mulvee acknowledged that when he left Danais Realty Group, he did not do so on good terms.

7. A dispute over the commission between Mr. Mulvee and Danais Realty Group regarding the transaction was arbitrated by Carl Norwood. Respondent testified that Carl Norwood had arbitrated the dispute and that Mr. Norwood ruled that Danais Realty Group was due \$7,000.00 of a \$25,000.00 commission. Danais Realty Group paid \$4,000.00 of the award to David Boutin for his activities as a procuring agent. Respondent testified that he had received a legal opinion from Attorney Susan Duprey prior to paying the commission to Mr. Boutin.

8. A letter from Carl Norwood was received by the Real Estate Commission substantiating that he had arbitrated the matter between Tower Realty and Danais Realty Group and reached an amicable settlement between the parties.

9. Complainant submitted exhibits that displayed David Boutin's name on a Danais Realty Group Internet Web site (Complainant's Exhibit 1) and Danais Realty facsimile transmittal sheet (Complainant's Exhibit 3). Both were dated after Mr. Boutin's license had expired and complainant alleges this shows that Respondent was allowing Mr. Boutin to continue unlicensed real estate activity at Danais Realty Group.

10. Respondent testified the Danais Realty Internet document submitted as Exhibit 1 was outdated because, at that time, they utilized a third party vendor to maintain the web site. The information had inadvertently failed to be removed from their advertising listing of employees. In addition, the Internet site did not identify Mr. Boutin as a Broker. Respondent further testified that the agency currently maintains its Internet site, and can quickly adapt the page to changes in circumstances.

11. The source of the facsimile transmittal sheet was disputed. The date on the transmittal sheet was inconsistent with the address printed on the sheet. The company's address printed on the transmittal sheet had changed approximately ten years prior to the date on the transmittal sheet. There had also been a second change of address before the date on the transmittal.

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

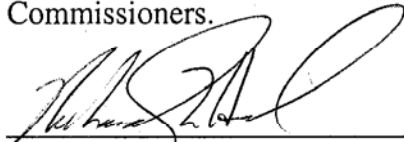
On balance, there was insufficient testimony presented to demonstrate that Mr. Boutin was paid for real estate activities performed after the expiration of his license. The Real Estate Commission finds that Mr. Boutin was paid for activities performed while he was a licensed broker.

Due to a lack of evidence that demonstrates that the Respondent paid David Boutin a fee for real estate activities that occurred after Mr. Boutin's license expired, the Real Estate Commission rules that Respondent did not violate RSA 331-A:26, XXIV.

The Real Estate Commission finds that the facsimile transmittal sheet was approximately ten years out of date and the business office information on the transmittal sheet was inconsistent with the date on the sheet. Therefore, Danais Realty Group either did not issue the facsimile transmittal sheet itself, or such use was inadvertent. Danais Realty Group may have inadvertently failed to update its Internet web site due to lack of communication with its Internet vender. Respondent had taken appropriate steps on its own prior to the complaint before the Real Estate Commission to prevent a repeat of such problems.

Due to a lack of evidence that demonstrates that the Respondent actively advertised that Mr. Boutin was a broker for Danais Realty Group after Mr. Boutin's license had expired, the Real Estate Commission rules that Respondent did not violate RSA 331-A:26, VI.

Former Commissioner William DeLashmit evaluated this case and did not take part in the hearing or decision. Richard Head and Berge Nalbandian sat as Alternate Commissioners.



Richard Head, Alternate Commissioner, Acting Chairman

10-22-01

DATE



Pauline Ikawa, Commissioner

10/23/01

DATE



Berge Nalbandian, Alternate Commissioner

10/22/2001
DATE